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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/004,823	12/07/2001	John R. Moody	2324 (GP-00-41)	7822
40256	7590	07/28/2005	EXAMINER	
FERRELLS, PLLC P. O. BOX 312 CLIFTON, VA 20124-1706			BUTLER, MICHAEL E	
			ART UNIT	PAPER NUMBER
			3653	
DATE MAILED: 07/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/004,823

**Applicant(s)**

MOODY

**Examiner**

Michael Butler

**Art Unit**

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 12 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-10,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-10,21 and 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim of priority to provisional application 60/254591 filed 12/11/00 is acknowledged.

### ***Prior Art References***

2. Applicant asserts the pics of the Bobrick 303 dispenser are not clear. Two clear copies were included in the folder sent to the mail room with the last action, one intended for applicant and the other for scanning into the IFW database. The IFW image did not scan clearly. We do not know if the mailroom may have copied the pics and mailed unclear copies rather than send the intended second copy. Accordingly, a remailing of the pics is being done at this time. If they do not appear clearly, we can fax the pics directly to the applicant or email the pics.

### ***Drawings***

3. New drawings will be required contingent upon allowance because the drawings were objected to by the draftsman/declared informal by the applicant.

### ***Election/Restriction***

4. Applicant's election of invention I, without traverse of the grouping but traversing the exclusion of claims 21-22 from group I of the restriction requirement in mailed 9/8/04 is acknowledged. Applicant's position on the inclusion of claims 21 and 22 is accepted, and the restriction requirement is made final. Claims 21 and 22 are now included in group I. The restriction grouping is made final.

5. The group II claims 11-20 were cancelled by the applicant.

***Claim Objections***

6. Claims 3, 5, and 10 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a referenced claim(s) from which they depend. Applicant has specified approximate midpoints without specifying the tolerance. As those tolerance may very well be the range applicant specified in the base claims, there has been no further limiting of the scope of the claim. These midpoint preferences of the base claims do not further limit the base claims' ranges.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 1-10 and 21-22 is/are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant is claiming a dispensing aperture that varies to a range of 80-90% of the transverse length of the towel yet has not provided as structure that is adjustable as a function of the towel length selected to properly accommodate a towel of such an arbitrarily selected length.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim(s) 1-10 and 21-22 is/are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant claims an open ended range of “about” 80-90% the transverse length of the towel yet has not specified by what tolerance the “about” extends the range. In claim 3 applicant further attempts to distinguish the length of the slot to “about 85% of the transverse length” without defining how close a tolerance on “about” refers to, i.e. +/-30%, 20%, 10%. Similar indefinite variable range and tolerances are claimed in claims 4,5, 9, 10, and 21.

Applicant has premised dimensions of the slot upon an extrinsic unclaimed variable-the width of the towel that one happens to select to fill in the container. The determination of whether prior art or infringing devices read on the claims would vary depending upon what arbitrarily selected towel were chosen for placement in the system.

The applicant has conjoined elements using “or” (claim 1 L 5, claim 21 line 5) creating vague and indefinite language as to the scope of the claim protection sought-alternate embodiments or a devices capable of reconfiguration for C-fold towels only vs. interfolded towels only or a device capable of receiving either or a device capable of receiving reconfigurable stacks of towels of a C-fold vs. interfolded variation. It is not apparent whether applicant is claiming Appropriate correction is required. The claims have been otherwise examined on the merits presuming Boolean “OR.”

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Applicant has explicitly claimed an adapter plate in the dependent claims, yet has merely left it ambiguous as to whether he is limiting his claim to a stand alone adapter plate for use within a dispenser vs. an adapter plate only while placed within a dispenser.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

12. Claims 1-10 and 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Morand (6003723) which discloses all the claimed elements including:

(Re: cl 1) In a gravity feed towel dispenser for dispensing C-fold and interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture(fig 1; an adapter plate (20) for securing to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels (c1 L 44-58, ratio t partially a function of towel selected and achieved with selection of towels available on the market; c4 L 52-c5 L 38; a towel width of <90% of the stack width-c4 L 13-20).

(Re: cl 2) the adapter plate is an elongate member with a generally planar medial portion and further comprises a pair of terminal portions projecting outwardly and upwardly with respect to the planar medial portion at each end of adapter plate, such that the terminal portions are upwardly inclined with respect to the medial portion of the plate (20 fig 1&7)

(Re: cl 3) elongated dispensing aperture is abridged to a length, L', of about 85 percent of the transverse length L of C-fold or interfolded towels (30 fig 1; c4 L 52-c5 L 38)

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(Re: cl 4) the upwardly inclined terminal portions have an angle of inclination of from about 10 to about 30 degrees with respect to the generally planar medial portion of the adapter plate (c4 L 52-c5 L 38)

(Re: cl 5) the upwardly inclined terminal portions have an angle of inclination of about 20 degrees with respect to the generally planar medial portion of the adapter plate (20 fig 1 & 7)

(Re: cl 6) pivotally secured to the lower portion of gravity-feed towel dispenser (c6 L 52-63)

(Re: cl 7) adapter plate is configured to define a central enlarged portion of the dispensing aperture and two restricted terminal portions of the dispensing aperture each of the portions having a span perpendicular to the length of the dispensing aperture (20 fig 1 & 7; c4 L 52-c5 L 38)

(Re: cl 8), wherein enlarged central portion has a span of at least about twice the span of the restricted terminal portions (c6 L 63-c7 L 3)

(Re: cl 9), wherein the terminal portions of the dispensing aperture have a span of from about 20 to about 40 percent of the width of interfolded towels corresponding thereto (c6 L 63-c7 L 3)

(Re: cl 10) wherein restricted terminal portions of aperture have a span of about 30 percent of the width of interfolded towels corresponding thereto and a collective length of at least about 40 percent of the abridged length L' of dispensing aperture (c6 L 63-c7 L 3)

(Re: cl 21) In a gravity-feed towel dispenser for dispensing C-fold and I-interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater, towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture, dispenser being of the class that are moved forwardly for reloading;

the improvement comprising an adapter plate secured to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels (c1 L 44-58, ratio t partially a function of towel selected and achieved with selection of towels available on the market; c4 L 52-c5 L 38)

wherein the adapter plate is pivotally secured to the dispenser to accommodate reloading (20 fig 1 & 7; c4 L 52-c5 L 38)

(Re: cl 22) adapter plate is pivotally secured to the sidewalls of the dispenser (c1 L 44-58, ratio t partially a function of towel selected and achieved with selection of towels available on the market; c4 L 52-c5 L 38 ; 20 fig 1 & 7; c4 L 52-c5 L 38).

### ***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-5 and 7-10 rejected under 35 U.S.C. 103(a) as obvious over Schutz et al.

(5950863) which discloses the elements previously discussed and further discloses elements

specifying optimal centerpoints of ranges that also coincide with the center points of base claims,

yet omit any further without specifying tolerance limits of those specified limits.

(Re: cl 1) In a gravity feed towel dispenser for dispensing C-fold and interfolded towels having a transverse length L combined with and housing the towels, through an elongated bottom dispensing aperture having a length of L or greater towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture fig 1; an adapter plate (20) for securing to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels (c8 L 1-30; c6 L 52-67; c5 l 27-67 and c6 L 1-6) (ratio t partially a function of towel selected and achieved with selection of towels available on the market, including the reference cited Ft. Howard Paper towels)

(Re: cl 2) the adapter plate is an elongate member with a generally planar medial portion and further comprises a pair of terminal portions projecting outwardly and upwardly with respect to the planar medial portion at each end of adapter plate, such that the terminal portions are upwardly inclined with respect to the medial portion of the plate (fig 1-3)

(Re: cl 4) the upwardly inclined terminal portions have an angle of inclination of from about 10 to about 30 degrees with respect to the generally planar medial portion of the adapter plate (48; FIG 1,3; c6 L 27-52 WITH c7 L 60-c8 L 30; c5 l 28-58)

(Re: cl 7) adapter plate is configured to define a central enlarged portion of the dispensing aperture and two restricted terminal portions of the dispensing aperture each of the portions having a span perpendicular to the length of the dispensing aperture (fig 1-6)

(Re: cl 8) , wherein enlarged central portion has a span of at least about twice the span of the restricted terminal portions (c8 L 1-30; c6 L 52-67; c5 l 27-67 and c6 L 1-6)



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(Re: cl 9) , wherein the terminal portions of the dispensing aperture have a span of from about 20 to about 40 percent of the width of interfolded towels corresponding thereto (C7 l 57-C8 l 30).

(Re: cl 3) elongated dispensing aperture is abridged to a length, L', of about 85 percent of the transverse length L of C-fold or interfolded towels

(Re: cl 5) the upwardly inclined terminal portions have an angle of inclination of about 20 degrees with respect to the generally planar medial portion of the adapter plate (c5 l 28-58)

(Re: cl 10) wherein restricted terminal portions of aperture have a span of about 30 percent of the width of interfolded towels corresponding thereto and a collective length of at least about 40 percent of the abridged length L' of dispensing aperture (C7 L 57-C8 L 30).

As Schutz et al. suggest with room to spare the broader limits of the range of the same centerpoint specified in base claims, it already discloses "an aperture about 85 percent of the transverse length of the towels or about 20 degrees with respect to the generally planar medial portion of the adapter plate, or having an aperture span about 30 percent of the width of the interfolded towels.

15. Claims 1-5 and 7-10 rejected under 35 U.S.C. 103(a) as obvious over Schutz et al.

(5950863) in view Morand, whereing Schutze et al. discloses the elements previously discussed and Morand discloses any elements not explicitly taught by Schutz et al. including:

dispensing aperture having a length L' of from about 80 percent to about 90 percent of transverse length, L, of the housed C-fold or interfolded towels.

16. Claims 1-8 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gettelman et al. (5957324) in view of the Bobrick 363 model towel dispenser (bearing a 3/81 copyright date on the interior instruction panel and having been in use in the USPTO Crystal Park 5 restrooms since at least 1999) in which Gettelman et al discloses:

(Re: cl 1) In a gravity feed towel dispenser for dispensing C-fold and interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture (fig 1); an adapter plate (22) for securing to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to (c2 L 24-42)

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(Re: cl 6) pivotally secured to the lower portion of gravity-feed towel dispenser (c2 L 47-59 ; fig 4-5)

(Re: cl 7) adapter plate is configured to define a central enlarged portion of the dispensing aperture and two restricted terminal portions of the dispensing aperture each of the portions having a span perpendicular to the length of the dispensing aperture (fig 3)

(Re: cl 21) In a gravity-feed towel dispenser for dispensing C-fold and I -interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater, towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture, dispenser being of the class that are moved forwardly for reloading;

the improvement comprising an adapter plate secured to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels, wherein the adapter plate is

pivotally secured to the dispenser to accommodate reloading (c2 L 47-59 ; fig 4-5)

(Re: cl 22) adapter plate is pivotally secured to the sidewalls of the dispenser ( c2 L 47-59 ; fig 4-5).

The Bobrick '363 model towel dispenser includes dimensions of a 9.75" dispensing slot and a towel magazine capable of holding 11.00" wide towels and further disclosing:

a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels (measured dimension sufficiently close to 90 percent of transverse length L to qualify as being about 90 percent)

(Re: cl 2) (Previously presented) the adapter plate is an elongate member with a generally planar medial portion and further comprises a pair of terminal portions projecting outwardly and upwardly with respect to the planar medial portion at each end of adapter plate, such that the terminal portions are upwardly inclined with respect to the medial portion of the plate (Bobrick '361)

(Re: cl 3) (Previously presented) (2) elongated dispensing aperture is abridged to a length, L', of about 85 percent of the transverse length L of C-fold or interfolded towels (9.75" dispensing slot)

(Re: cl 4) (Previously presented) (2) the upwardly inclined terminal portions have an angle of inclination of from about 10 to about 30 degrees with respect to the generally planar medial portion of the adapter plate (tangential inclination spans from horizontal to 65 degrees from horizontal)

(Re: cl 5) (Previously presented) (4) the upwardly inclined terminal portions have an angle of inclination of about 20 degrees with respect to the generally planar medial portion of the adapter plate (fig 2)

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(Re: cl 8) (7), wherein enlarged central portion has a span of at least about twice the span of the restricted terminal portions (.75" to 2.5").

It would have been obvious for the Gettleman et al. retrofit adapter to have dimensions selected from those used in the proven Bobrick 363 towel dispenser because such dispenser has proven itself effective in minimizing multiple dispensed towels and fall through and come up with the instant invention.

17. Claims 1-10 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frazier et al. 5322186 in view of the Morand wherein Frazier discloses:

(Re: cl 1) In a gravity feed towel dispenser for dispensing C-fold and interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture(fig 1); an adapter plate for securing to bottom portion of towel dispenser configured to abridge the length of dispensing aperture (c3 L 22-43)

(Re: cl 2) the adapter plate is an elongate member with a generally planar medial portion and further comprises a pair of terminal portions projecting outwardly and upwardly with respect to the planar medial portion at each end of adapter plate, such that the terminal portions are upwardly inclined with respect to the medial portion of the plate (c4 L 51-c5 L 2)

(Re: cl 3) elongated dispensing aperture is abridged to a length, L', of about 85 percent of the transverse length L of C-fold or interfolded towels (18/74 fig 10; c4 L 51-c5 L 2)

(Re: cl 6) pivotally secured to the lower portion of gravity-feed towel dispenser (c4 L 51-c5 L 2)

(Re: cl 7) adapter plate is configured to define a central enlarged portion of the dispensing aperture and two restricted terminal portions of the dispensing aperture each of the portions having a span perpendicular to the length of the dispensing aperture (74/18 fig 10)

(Re: cl 8) , wherein enlarged central portion has a span of at least about twice the span of the restricted terminal portions (74/18 fig 10)

(Re: cl 9) , wherein the terminal portions of the dispensing aperture have a span of from about 20 to about 40 percent of the width of interfolded towels corresponding thereto (74/18 fig 10)

(Re: cl 10) wherein restricted terminal portions of aperture have a span of about 30 percent of the width of interfolded towels corresponding thereto and a collective length of at least about 40 percent of the abridged length L' of dispensing aperture (74/18 fig 10)

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(Re: cl 21) In a gravity-feed towel dispenser for dispensing C-fold and I-interfolded towels having a transverse length, L, through an elongated bottom dispensing aperture having a length of L or greater, towel dispenser including means for defining a top portion, a front wall, a back wall and a pair of side walls of towel dispenser, as well as a bottom portion collectively defining an interior for receiving a stack of C-fold or interfolded towels to be dispensed through aperture, bottom portion of towel dispenser defining elongated bottom dispensing aperture, dispenser being of the class that are moved forwardly for reloading;  
the improvement comprising an adapter plate secured to bottom portion of towel dispenser configured to abridge the length of dispensing aperture to a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels, wherein the adapter plate is pivotally secured to the dispenser to accommodate reloading (c3 L 22-43)  
(Re: cl 22) adapter plate is pivotally secured to the sidewalls of the dispenser (c4 L 51-c5 L 2)

Morand discloses any elements not explicitly taught by Morand including:

dispensing aperture having a length L' of from about 80 percent to about 90 percent of transverse length, L, of C-fold or interfolded towels (c1 L 44-58, ratio t partially a function of towel selected and achieved with selection of towels available on the market; c4 L 52-c5 L 38)  
(Re: cl 4) the upwardly inclined terminal portions have an angle of inclination of from about 10 to about 30 degrees with respect to the generally planar medial portion of the adapter plate (c4 L 52-c5 L 38)  
(Re: cl 5) the upwardly inclined terminal portions have an angle of inclination of about 20 degrees with respect to the generally planar medial portion of the adapter plate (20 fig 1&7).

It would have been obvious for Frazier to have a dispensing aperture of about 80 to 90 percent of the towel length and preferably 85% to minimize fallout and double dispensing as taught by Morand and come up with the instant invention.

### ***Response to Amendments/Arguments***

Applicant has challenged the prior art chronology of the Bobrick 363 dispenser and demanded presentation of an affidavit on the reference. A 132 affidavit has been prepared and has been included in the response. The dispensers were in use since at least August of 1999 in the Crystal Park 5 restrooms. Further, the copyright date affixed establishes by preponderance

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of evidence a 1981 public sale/use date. Accordingly, Bobrick '363 towel dispenser remains prior art per.

Applicant has challenged the dimensions measured and shown with the tape measure of the Bobrick 363 dispenser and demanded presentation of an affidavit on the dimensions attributed to the reference. A 132 affidavit has been prepared and has been included in the response.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections under 35 U.S.C. 112 second.

Use of "about" is permitted as enabling elements in NONCRITICAL elements not used in distinguishing over the prior art. A range in a claim is a closed in limitation of the scope of the claim, determinative of the claim scope, not enablement of the claim elements. This is the only attempt at further limitation in these dependent claims from the base claim is the open ended limitation "about 85", of which the 80-90 percent already is about 85 in a plurality of meanings of the word "about 85". Applicant's attempt at flexible claim scope limitations unduly would leave potential infringers guessing as to whether their devices read on applicant's claims.

Further, 80-90 is certainly surrounding 85 per an alternative reading of about; it is also approximately 85.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the anticipatory rejections evidenced by Morand. Morand expressly identifies a towel width of <90% of the stack width (c4 L 13-20). Morand goes beyond merely a dispenser capable of use with towels larger than the dispensing length but expressly discloses the combination in use.

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Applicant's arguments has been effective in overcoming Schutz et al. as an anticipatory reference as Schutz et al. does not expressly explicitly disclose combination of a dispenser and towel and the slot about 80-90% of the length about the towel. The slot has a varying length ranging from spanning the entire length of the dispenser cabinet to substantially to a substantially shorter length as shown at the bottom of figure 10. It would certainly be obvious to place a towel in the cabinet that is exceeds the lower slot length by greater than 10-25%.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections of Gettlmen et al. in view of the Bobrick model 363 towel dispenser. The magazine is well capable of holding towels exceeding the width by about 10-25% and would have been obvious to one of ordinary skill in the art to place towels of such dimensions in the dispenser. Gettlemen et al. and Bobrick model 363 both disclose a curved having variable angles of inclination which read which encompass applicant's selected angle. The length of slot is sufficiently close to 90% of available towel length to obviate a slot about 80-90% of the towel length.

The applicant's arguments have been fully considered but they are unpersuasive in overcoming the rejections of Frazier in view of Morand. Morand goes beyond merely a dispenser capable of use with towels larger than the dispensing length but expressly discloses the combination in use.

***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

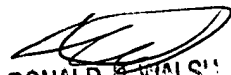
19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on (571) 272-6944. The fax number for the Group is (703) 305-7687.

*Michael E. Butler*

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